

- - REMARKS - -

Claims 1-40 remain in the case. Claims 1, 2, 3, 6, 8, 9, 22, 28, and 35 are amended to point out more particularly Applicant's invention, without addition of new matter. Based upon the within discussion, it is believed that all claims are novel and unobvious, that the rejection thereof should be reconsidered and withdrawn, and that all claims should be allowed.

I. REJECTION OF CLAIMS 1-6, 9-13, 17-19, 21, 22, 27, 28, 30, 34, 35, and 40 under 35 USC 102(b) AS ANTICIPATED BY THE LEHER (U.S. 2,467,393) REFERENCE IS ERROR AND SHOULD BE RECONSIDERED AND WITHDRAWN.

It is well-settled that anticipation under 35 USC 102 requires the disclosure in a single piece of prior art, of each and every limitation of a claimed invention. *Electro-Med. Systems SA v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 U.S.P.Q. 2d 1017, 1019 (Fed. Cir. 1994).

It is of record in this case, which previously was a PCT Application, that the IPEA Search Report and Opinion rendered by the U.S. Examiner, found that all claims have novelty. This, of course, means the claims were not anticipated. Accordingly, Applicant respectfully submits that examination of this application, with claims somewhat narrowed from those in PCT application, cannot overturn the prior Search Report and opinion and in effect have one more bite at the anticipation apple. Applicant respectfully urges that there is no legal basis for overturning the prior search report and opinion, and that the latter is binding in the prosecution of this case.

The Leher reference clearly does not meet the very specific requirements for anticipation set forth in the above-cited authority. The Office Action contains the comment forming the basis of the rejection on Leher, "Leher shows the system and the method claimed, including a superheated vapor generating chamber (62) with an input for inputting a liquid, an output for outputting the superheated vapor, heating means (110) coupled to the output for further heating the superheated vapor, the conduit means (62) in thermal contact with the heating means, control means (144) for controlling the superheated vapor, a nozzle member detachably attachable to the conduit means, the further superheated vapor having a higher temperature than the temperature of the output superheated vapor, and a handle (94) with an [sic] sheath insulation layer such as an asbestos layer (95) enclosing the handle member." Office Action para. 2.

It is unclear from the above-cited passage of the Office Action why the Leher conduit means and generating chamber are given the same reference numeral—62. In Leher, the element designated horizontal boiler 60 is shown in Fig. 1 and the tubular vapor duct 62 is also shown in that figure, as well as others. The (unnumbered in the Office Action) output together with the misstatement concerning the generating chamber and the conduit means, evidence a basic misconception concerning Leher and the Applicant's invention. As set forth in currently amended claim 1, "At least one superheated vapor generating chamber for generating superheated vapor from liquid; at least one output for output of superheated vapor from said at least one superheated vapor generating chamber; and second heating means independent from said first heating means contactable in energy transfer contact with superheated vapor

from said output of said at least one superheated vapor generating chamber for further heating said output superheated vapor from said at least one superheated vapor generating chamber.”

This is in complete contrast to Leher, wherein the alleged “superheated vapor generating chamber (62)” is of an irregular shape wherein a heating element is disposed in a somewhat spherical section thereof, and continuously proceeds through an elongated handlelike section thereof. It should be noted that the boiler 60 is in fact a housing to house the heating means which is in an elongated sheathlike structure 62. Included in element 62 is a continuous heating element extending throughout the member 62 all the way to an output thereof.

Thus, Applicant’s superheated vapor generating chamber with output for superheated vapor with second heating means independent from said first heating means contactable in energy transfer contact with superheated vapor from the output of the at least one superheated vapor generating chamber for further heating the output superheated vapor from the superheated vapor generation chamber, does not exist in Leher.

In Leher, the continuous heating element heats the vapor all along its path as opposed to an independent second heating element at to raise the temperature of superheated vapor emanating from the output of the vapor generation chamber.

It should be noted that the “heating means (110) coupled to the output for further heating the superheated vapor” referred to in the Office Action, is not to be found in the claims of the subject

Application. The so-called vapor generation chamber 60 and conduit 62 are in fact one structure comprising a continuous (though irregular shaped) vapor generation chamber, with one continuous heating element.

This is in striking contrast to Applicant's vapor generation chamber with output leading to a nozzle (per dependent claims) on the inner side of which is independent heating means for raising the temperature of superheated vapor emanating from the vapor generation chamber.

It is further notable that as a result of the differences and distinctions between the Leher device and Applicant's invention, superheated steam/vapor is producible by Applicant's invention in the range of 1500 degrees F – 2000 degrees F (as recited in claims 14 and 15) and wherein (as recited in claim 16) the separate heating of the superheated vapor after its exit from the combustion chamber can raise the temperature of the superheated vapor by substantially at least 1000 degrees F.

In contrast, the Leher device refers to superheated "gaslike vapor of over 700 degrees F." Col. 6, lines 1-2, Leher.

Accordingly, the rejection of the subject claims as amended is erroneous and should be reconsidered and withdrawn.

II. REJECTION OF CLAIMS 1-40, AS AMENDED, UNDER 35 USC 103(a) AS UNPATENTABLE OVER FRIEDHEIM (U.S. 5,471,556) IN VIEW OF PRESTON (U.S. 2,515,835), LANGMUIR ET AL. (U.S. 2,437,963) or LEHER, *supra*. IS ERRONEOUS, AND SHOULD BE RECONSIDERED AND WITHDRAWN.

The IPEA Search Report and Opinion rendered by the U.S. Examiner finds all claims (1-40, inclusive) have novelty.

The Office Action alleges that Claims 1-40, inclusive, are obvious over Friedheim (U.S. Pat. No. 5,471,556) in view of PRESTON et al (U.S. Pat. No. 2,515,835), Langmuir et al (U.S. Pat. No. 2,437,963) or Leher, *supra*. Applicant respectfully traverses this contention.

The Preston et al device is wholly distinct and different from Applicant's invention. In Preston et al, the system is used to obtain ordinary (not superheated) oxygen from a source of liquid oxygen. The top temperatures referred to in PRESTON are 30-36°F not 500°F plus as in Applicant's invention. The difference between oxygen and superheated steam in terms of handling and in terms of effectiveness for particular tasks is obvious and apparent.

Nowhere in the Preston et al reference does there appear any reference to, or any suggestion of, the feasibility or desirability of further heating superheated steam.

All that may be found in the cited reference is heating of oxygen (not superheated steam) to reach and maintain a desired temperature, not --as in Applicant's invention-- to increase its temperature substantially (the Preston

et al oxygen temperature being small relative to the temperature of the superheated steam in Applicant's invention).

Clearly, the cited reference of Preston et al cannot support a finding of obviousness when sought to be combined with Friedheim `556. Such attempt to combine references is thoroughly a patchwork, an attempt to graft apples onto oranges, the two devices being wholly different, with different purposes, different functions, and different results. Thus, this is not only prohibited hindsight reconstruction but it is a combination which would be totally contraindicated in view of the fact that it is merely conceptual and could not support any type of functioning device or conception of a functioning device. The prohibition against hindsight reconstruction was reiterated by the Court in *KSR*. *KSR, supra.* at 14,15.

Accordingly, the attempt to combine the Friedheim `556 reference and the Preston et al reference, is impermissible and doomed to failure rendering the allegation of obviousness clearly erroneous. *Ibid*; See also In re Rouffat, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998) ("To prevent the use of hindsight based on the invention to defeat patentability of the invention, this Court requires the Examiner to show motivation to combine the references that create the case of obviousness."); SmithKline Diagnostics, Inc. v. Helena Laboratories, Corp., 859 F.2d 878, 8 USPQ2d 1468 (Fed. Cir. 1998) ("A challenger of the validity of a patent cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention."); see also, In re Wright, 848 F.2d 1216, 6 USPQ2d 1959 (Fed. Cir. 1988) ("Claimed subject matter was not obvious in view of prior art that suggested placing a core pin in a cylindrical vial for another purpose (increasing the visibility of the bubble)." (Emphasis added)).

Regarding the Langmuir et al reference, that reference cannot be validly combined with Friedheim '556 to render obvious Applicant's invention.

It is clear that the thrust and purpose of the system and method in Langmuir et al is to produce aerosols. There is no use or suggestion of superheated vapor and/or steam and in fact, such would be contraindicated because in the production of aerosols, the presence of droplets of liquid within vapor is necessarily a part of the process. Of course, such droplets in superheated steam are undesirable (a "dry" vapor being desired).

Accordingly, there is no suggestion or motivation in the art cited for combining Langmuir et al with Friedheim '556, the purpose, function, and results of the Lanmuir et al device and method being wholly distinct from and unrelated to—and in fact contradictory to-- the purpose, function and results of Friedheim '556 and of the Applicant's invention. *In re Wright, supra*. Consequently, the allegation that the combination of Friedheim '556 and Langmuir et al renders Applicant's invention obvious is clearly erroneous.

Equally unavailing is the attempt by hindsight reconstruction to combine Leher with Friedheim '556. As noted above in the discussion of Leher regarding alleged anticipation, the reference device is wholly different and distinct from Friedheim '556 and Applicant's invention. As noted above, Leher does not show or suggest further heating of superheated vapor emanating from a vapor generation chamber for the purpose of raising the temperature of the superheated vapor emanating from the superheated vapor generation chamber. Rather, it simply provides for an elongated and continuous heating element for continuously heating superheated vapor. It is also notable that the operativeness of the Leher device is extremely suspect in that despite the protestations of the patentee to the contrary, elementary physics would dictate that the Leher provision for close contact of moisture with an electric heating element is in all probability, an invitation to a sudden and possibly

disastrous short circuit. Of course, an inoperative device cannot be used as a reference.

III. CONCLUSION

On the basis of the foregoing it is respectfully submitted that the amended claims are novel and unobvious, that all objections should be reconsidered and withdrawn and that all claims should be allowed.

Respectfully submitted,
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